BRIEF IN SUPPORT OF PETITION

Opinions Below.

The opinions of the District Court (per Caffey, *J.*,) appear in the Record at pages 77 and 83 and have not been printed in the reports. The opinion of the Circuit Court of Appeals (per Clark, *J.*,) appears at page 89 of the Record, and is reported in 147 F. (2d) 899.

Statement of the Case

The basis of jurisdiction to review, the facts, the rulings below, and the questions presented are set forth in the foregoing petition.

Specification of Errors

The Circuit Court of Appeals erred:

In holding that the facts alleged in the complaint constituted the statement of a cause of action when the State Court had already adjudged otherwise.

In deciding, in conflict with applicable local decisions, that, as a matter of substantive law, a trustee may not, under pain of duress, insist on a release or a judicial decree settling the trust accounts as a condition of turning over the trust property.

In departing from the accepted and usual course of judicial proceedings by overruling and reversing the decision of a State Court having prior jurisdiction.

Summary of Argument

Bank of New York was a trustee. Mrs. Griffith was a remainderman. The trust ended, and the trustee's accounts were settled by a judgment of the New York Supreme Court (4-15). To that action Mrs. Griffith was a party (4). That judgment is still in full force and effect.

Then Mrs. Griffith sued in the New York Surrogates' Court to compel an accounting by the trustee (26-60). That Court held the judgment of the Supreme Court was *res judicata* on the question of the accounts (76). Mrs. Griffith said the judgment had been recovered by duress (59-60). The Court said the facts alleged did not constitute duress under New York law. The Court accordingly dismissed Mrs. Griffith's suit by decree (76). That decree is still in full force and effect.

Then Mrs. Griffith sued in the District Court, in tort (19-23), and alleged duress (22) on precisely the same facts as pleaded in the Surrogates' Court. The District Court dismissed the complaint (84-85). Mrs. Griffith appealed (86). The Circuit Court of Appeals reversed (104), holding duress had been adequately pleaded (92).

It is quite clear that "where a state decision or judgment has determined and applied the law governing the rights of the parties upon the particular controversy before it, the judgment is *res judicata* as to both the law and the facts in a subsequent action between them in a federal court involving the same matter, whether the law applied is statutory or general in its nature

and even though, as a mere precedent, it might or might not be followed in a case involving different parties". (*Freeman on Judgments* (5th Ed.), § 1467.)

POINT I

The Decision of the Surrogates' Court is *res judicata* as to the effect of the Judgment of the Supreme Court.

The Surrogate said (*infra*, p. 14):

> "Pursuant to this judgment distribution was made, and the reserve fund ultimately distributed to the parties entitled to it upon their giving the requisite receipts. The petitioners in this proceeding, in effect, attempt to open the issues and the final judgment entered in the action. * * * The motion to dismiss the compulsory proceeding is granted on the ground that such judgment is conclusive and may not be collaterally attacked (*Crouse* v. *McVickar*, 207 N. Y. 213)."

The Circuit Court of Appeals did not agree with the Surrogate (93). They decided that it was not the law of New York that in the circumstances of this matter the judgment could not be collaterally attacked, notwithstanding the Surrogate's prior adjudication of the matter. And so they directed a relitigation of the issues thus previously disposed of by the Surrogate.

Freeman on Judgments (5th Ed.), § 1466:

> "The effect which a state judgment shall have as *res judicata* in the federal courts is a matter of state or local law of the state where the judgment was rendered."
>
> *Union & Planters' Bank* v. *Memphis*, 189 U. S. 71, 75.

It makes no difference whether the Surrogate was right or wrong. The judgment of that Court is *res judicata*, and cannot be reversed in the federal courts.

Boundary County v. *Woldson*, 144 F. (2) 17, 19;
National Lead Co. v. *Nulsen*, 131 F. (2) 51, 56;
Restatement, Judgments, §48.

POINT II

The Decision of the Surrogates' Court is *res judicata* as to the sufficiency of the Statement of a Cause of Action for Duress.

The Surrogate said (*infra*, p. 14):

> "Your petitioners were advised by said trustee and its attorneys and by their own attorneys that unless your petitioners should agree to release said trustee and waive all objections to their accounts and accept the property in kind, said estate would be further wasted by a reference the cost of which would have to be borne by the trust funds coming to your petitioners. * * * Your petitioners * * * were forced to release said trustee and to consent to the allowance of the trustee's accounts in the Supreme Court in order to obtain property to which your petitioners were entitled. Said trustee refused to turn over said estate except on release and discharge and the acceptance of its accounts, and your petitioners were unable to contest such demands due to the danger and the direct threat of the continuance of disastrous and wasteful litigation."

The Surrogate held this was not a statement of facts sufficient to constitute a cause of action apart from a

collateral attack on the judgment of the Supreme Court, and dismissed the petition (76).

There is no question but that the Surrogate correctly applied the law of New York. A trustee does not have to surrender the trust property unless and until his accounting is either approved by the remainderman or passed upon by a court.

> *Neary* v. *City Bank Farmers' Trust Co.*, 260 App. Div. 791, 793.

Right or wrong, however, that should have been the end of that issue, except on an appeal. This is not a question of procedure. The issue was raised, the proceeding was based on it, and it was adjudicated.

The Circuit Court of Appeals, however, on presentation of the issue, applied the law of Oklahoma (*Ingram* v. *Lewis*, 37 F. (2) 259), and concluded that the Surrogates' Court "seems to be going beyond the ancient distinction between forms of fraud" (95); and they decided that the adjudication of the issue could not have been on the merits—apparently because the Surrogate "does not speak of 'intrinsic fraud' in terms"; and then they reversed the Surrogates' Court, and decided that the complaint did state a cause of action (citing *Ingram, supra*); and they reversed the District Court and remanded the case, because the law of New York did not afford "an adequate remedy, since motions to set aside a judgment for fraud are not contemplated by the relevant sections of the New York Civil Practice Act" (96).

It is quite true that the law of New York affords no remedy such as the Circuit Court of Appeals has directed. The decision of the Court is in conflict with applicable local decisions. But the overruling of the decision of a State Court on the very issue between the same parties, on the authority of foreign law, is quite out of the ordinary. For the judgment of a State Court which has jurisdiction should not be ignored or collaterally impeached in a Federal Court, nor should it be modified for mere error.

Freeman on Judgments (5th Ed.), § 1464.
Restatement, Judgments, § 50.

LAST POINT

Pray the Court will Review this Matter.

Hundreds of trusts in New York end each year, and are wound up by the trustee taking a receipt and release from remaindermen or entering a judgment by consent. These settlements are favored by the State Courts.

Matter of White, 182 Misc. 223, 227.

It is customary and lawful for the trustee to retain possession of the trust property until the formal or judicial settlement is effected. In New York this practice as a matter of law does not constitute duress.

Kamenitsky v. *Corcoran*, 177 App. Div. 605, 608;
Crossways Apartments Corp. v. *Amante*, 213 App. Div. 430, 436.

If, after the entry of a consent decree settling a trustee's accounts, a remainderman can come into the District Court and say: "Duress! Because the trustee refused to surrender the trust property until I had consented to the accounting decree"; and thereupon the District Court is to ignore the decree and try out the issues anew applying, not the law of New York, but a rule laid down in Oklahoma for the protection of a Creek Indian fallen among thieves (*Ingram* v. *Lewis*, *supra*): then there will be a great confusion among courts, and conflicts of jurisdiction, and uncertainty as to the finality of judgments; and no man can tell the end of it.

Respectfully submitted,

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